IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6142 OF 2002

Shri Nandikishore Nathu Patil .. Petitioner

v/s.

The Principal,
J.N.Paliwala College of Arts,
Science & Commerce, Pali,
Dist. Raigad & ors. .. Respondents

Ms.Sushmita D. Burman i/by Mr.Mihir Desai for the petitioner.

Mr.R.M.Patne, Assistant Government Pleader for the respondent Nos.4 and 5.

Mr.B.V.Phadnis for the respondent No.3.

Mr.G.V.Limaye for the respondent Nos.1 and 2.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 4th May, 2005

P.C.

Heard Ms.Sushmita Burman, advocate for the petitioner, Mr.B.V.Phadnis, advocate for the respondent No.3 and Mr.G.V.Limaye, advocate for the respondent Nos.1 and 2 and Mr.R.M.Patne, AGP for the respondent Nos.4 and 5. Respondent No.6 has not chosen to appear despite service.

2. The petitioner has prayed for the following reliefs:-

(a) that this Hon'ble Court be pleased to issue a writ of prohibition or a writ, order or direction in the nature of Prohibition restraining the Respondents from terminating the services of the Petitioner as a full time Lecturer in Botany from the Respondent No.1 college.

(b) that this Hon'ble Court be pleased to issue a writ of Certiorari, or a writ, order or direction in the nature of Certiorari quashing and setting aside the order dated 9th October, 2002 annexed at Exhibit-E.

(c) that this Hon'ble Court be pleased to issue a writ of Mandamus or a writ, order or direction in the nature of Mandamus directing the Respondents to treat the Petitioner as permanent full time lecturer in Botany with all consequential benefits.

(d) In the alternative to prayer (c) above, for an order directing the Respondents to dereserve the post occupied by the Petitioner and upon conclusion of the same to treat the Petitioner as confirmed full time lecturer in Botany.

(e) pending hearing and final disposal of this petition this Hon'ble Court be pleased to direct the Respondents be restrained from terminating the services of the Petitioner as a full time lecturer in Botany and be directed to pay him his full wages as a lecturer.

(f) for ad-interim reliefs in terms of prayer (e) above.

(g) for costs of this petition.

(h) for such other and further reliefs as this Hon'ble Court may deem fit and proper in the circumstances of this case.

3. J.N.Paliwala College of Arts, Science &

Commerce, Pali, District Raigad (for short, 'the college') is run by Sudhagad Education Society (for short, 'the Management'). The college is degree college affiliated to the University of Mumbai. On 2nd January, 1995, the petitioner was appointed as Lecturer in Botany in the college. The petitioner claims to be B.Sc. and M.Sc. with 57% of marks. The appointment of the petitioner was on temporary basis based on his selection by local selection committee. In the year 1997, the post of Lecturer of Botany was changed to scheduled caste category due to subjectwise reservation. Since no suitable candidate from schedule caste was available, the petitioner was appointed by the duly constituted selection committee for one academic year 1997-1998. Thereafter, for the subsequent academic years viz. 1998-1999, 1999-2000 and 2000-2001, the petitioner was again appointed as Lecturer in Botany by the local selection committee against the post reserved for scheduled caste candidate due to non-availability of scheduled caste candidate. The University of Mumbai granted approval on temporary basis to the appointment of the petitioner for each of the academic years as aforenoticed. On 4th April, 2000, the University Grants Commission issued resolution that the candidates without NET/SET cannot be appointed and if appointed, no

approvals will be granted and without approval, the concerned college shall not receive the salary grant from the Government. The petitioner did not have NET/SET and accordingly, by order dated 31.3.2001, the petitioner's services came to be terminated and it was communicated to the petitioner that he will not be appointed for the academic year 2001-2002. Aggrieved by his termination order dated 31.3.2001, the petitioner approached Mumbai University and College Tribunal by filing appeal being appeal No.33 of 2000. By order dated 24.10.2001, the Mumbai University and College Tribunal allowed the appeal of the petitioner by the following order:-

"(a) Disapproval of the Appellant's appointment for the year 2000-2001 by the University is quashed and set aside and the University is directed to grant approval for the Appellant's appointment for the year 2000-2001.

(b) The order of termination dated 31st March, 2001 by Respondents No.1 & 2 is quashed and set aside.

(c) Respondent No.3 is directed to grant approval to the appointment of the Appellant from 9th June, 2000 in terms of Government Circular dated 18th October, 2001.

(d) Respondents No.1 & 2 shall reinstate the Appellant in the post held by him prior to termination and pay emoluments including backwages due to the Appellant from the date of termination.

(e) Respondent No.4 to reimburse salary in terms of this order."

4. It appears that for the academic year 2001-2002, the respondent No.6 herein - P.K.Ramteke who claims to have been eligible for the appointment to the post of Lecturer in Botany and having not been given appointment, raised his grievance before the Grievance Committee under section 57 of the Maharashtra Universities Act, 1994. The Grievance Committee considered the matter and placed its opinion before the Standing Committee, Mumbai University. The Standing Committee gave its recommendation which was placed before the Management Council. The Council at its meeting held on September 21, 2002, accepted the recommendation and resolved thus-

"Resolved that Shri P.K.Ramteke be appointed as Lecturer immediately on the post reserved for SC, failing which strict disciplinary action will be taken against the college."

5. In compliance thereof, the Management communicated to the petitioner on 14.10.2002 that Shri P.K.Ramteke has been appointed as Lecturer in the Botany against the reserved post and that petitioner’s service is being terminated.

6. By means of this writ petition, the petitioner substantially seeks to challenge the resolution of

the Management Council dated 9.10.2002 whereby it resolved that P.K.Ramteke be appointed as Lecturer immediately on the post reserved for scheduled caste and the communication of the Management dated 14.10.2002 whereby the Management intimated the petitioner that the petitioner's service shall be brought to an end on the appointment of P.K.Ramteke to the post of Lecturer, Botany.

7. Ms.Sushmita Burman, the learned counsel for the petitioner contended that the post of Lecturer in Botany was an open category post right from 1992 and that post could not have been legally changed to the post reserved for scheduled caste candidate in the year 1997.

8. The contention of the learned counsel for the petitioner is fallacious and cannot be accepted. First, the post of Lecturer in Botany was changed from the open to scheduled caste category due to the subjectwise reservation in the year 1997. At no point of time prior to the filing of the present writ petition, the petitioner had any grievance of change of the post of Lecturer in Botany from the open category to scheduled caste category. As a matter of fact, the petitioner was beneficiary to the change of the post to scheduled caste category

as due to non-availability of suitable scheduled caste candidate, the petitioner was appointed temporarily for every academic year right from the academic year 1997-1998 until 2001-2002. It is too late in the day after the long distance of more than five years for the petitioner to assail the change of the post of Lecturer in Botany from open to scheduled caste category. Secondly, even otherwise, we find no illegality in change of the post of Lecturer in Botany from open to scheduled category category due to the subjectwise reservation.

9. Thus, the contention of the learned counsel for the petitioner that the post of Lecturer in Botany could not have been changed from open category to scheduled caste category, cannot be accepted.

10. The learned counsel for the petitioner then contended that the resolution of the Management Council dated 9.10.2002 is based on the recommendation of the Grievance Committee which was made at the back of the petitioner without giving him any notice. This aspect need not be gone into by us on merits since we are informed by the learned counsel for the Management that P.K.Ramteke despite the resolution dated 9.10.2002 passed by

the Management Council of the University of Mumbai accepting the recommendation of the Grievance Committee and the Standing Committee has not joined the post of Lecturer in Botany. Mr.G.V.Limaye, the learned counsel for the Management submitted that the respondent No.6 - P.K.Ramteke is employed elsewhere and is not interested in joining the service. In this view of the matter, obviously, the grievance raised by P.K.Ramteke that despite that the post of Lecturer in Botany is reserved in the college, he has not been appointed is of no consequence and as a result thereof, the resolution dated 9.10.2002 of the Management Council accepting the recommendation of the Grievance Committee and the Standing Committee is rendered ineffective. The communication dated 14.10.2002 in this backdrop of situation also has to go because the service of the petitioner was sought to be terminated as in his place P.K.Ramteke who was scheduled caste candidate was required to be appointed as per the resolution of the Management Committee of University of Mumbai passed on 9.10.2002.

11. It is, however, to be clarified that though the resolution of the Management Council of University of Mumbai dated 9.10.2002 and the communication of the Management dated 14.10.2002

are rendered ineffective, in so far as the petitioner is concerned, his appointment to the post of Lecturer in Botany which is reserved for scheduled caste candidate, has to be temporary on year to year basis until such post is dereserved in accordance with law.

12. We, accordingly, dispose of the writ petition by the following order:-

i) The post of Lecturer in the subject of Botany in the college (J.N.Paliwala College of Arts, Science & Commerce, Pali, District Raigad) is the post reserved for scheduled caste candidate from the year 1997 until dereserved in accordance with law.

ii) The resolution dated 9.10.2002 of the Management Council of the University of Mumbai and the communication of the Management dated 14.10.2002 are declared to be ineffective since the concerned candidate - respondent No.6-P.K.Ramteke has not joined his duty

to the post of Lecturer in the subject of Botany in the respondent No.1 college.

iii) The petitioner's appointment on the post of Lecturer in the subject of Botany shall be treated as temporary on year to year basis until the post of Lecturer of Botany is dereserved in accordance with law.

iv) The petitioner shall be at liberty to apply to the concerned authorities for dereservation of the post in accordance with law.

(R.M.LODHA, J.)

(R.S. MOHITE, J.)